reduce or restrict Federal Government actions that were believed to encourage development in certain undeveloped coastal barrier areas, including both islands and mainland property. While COBRA does not prevent private financing and development, it does limit financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as assistance for emergency actions essential to saving lives, protecting property, and preserving public health and safety. Any form of expenditure of federal funds for a loan, grant, guarantee, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance is prohibited. Such emergency assistance would not include disaster assistance and government loans.

COBRA, which also added §4028 to the Flood Act, prohibits the NFIP from providing flood insurance protection for structures built, or substantially improved, after the area has been designated as an undeveloped coastal barrier area.

Buildings already located in the designated areas and walled or roofed prior to the designation remain eligible for coverage. If a building built in a designated area prior to it being designated sustains substantial damage as a result of a fire, hurricane, or other causes, the restored structure is not eligible for flood insurance coverage.

Lenders are required to notify borrowers that the property is in an SFHA. However, the unavailability of flood insurance does not prevent the making of a conventional loan. As with loans in nonparticipating areas, the lender would be well advised to assess the flood risk at the site in deciding whether to grant the loan.

(2) Structures in Violation of State or Local Laws

In accordance with Section 1316 (42 U.S.C. 4023) of the Act, a conventional loan can be made when the building is located in an SFHA of a participating community, but is not eligible for flood insurance protection because it has been declared to be in violation of local floodplain management building codes. Nevertheless, compliance with the provision notifying the borrower that the building is in an SFHA would be especially important. Because of violations relating to protection against flooding, properties that come under the provisions of Section 1316 will usually be highly susceptible to flood damages, and are a far greater risk to the lender than structures compliant with floodplain management ordinances.

With respect to both COBRA and 1316 properties, the lack of available NFIP coverage in a participating community does not prohibit a lender from making a conventional loan. The statute mandates coverage only when "the sale of flood insurance has been made available," 42 U.S.C. §4012a(b).

(3) Underwriting Restrictions

Some policy provisions and underwriting rules pertaining to the Standard Flood Insurance Policy preclude certain properties or parts of a structure from eligibility for coverage. For example, structures built over water cannot be insured under the Program, nor can boathouses. The NFIP policies also contain restrictions on insurance coverage, such as the portions of finished basements and Post-FIRM elevated buildings where only enumerated and limited coverage is available. A complete and current list of coverages and exclusions may be found in Title 44 of the Code of Federal Regulations, Chapter I, Section 61.5, and the standard form of flood insurance policies issued under the NFIP, reproduced in Appendix A to Part 61 of the regulations.

C. GENERAL MANDATORY PURCHASE PROVISIONS

This section of the guidelines describes the entities regulated by the Act and specific provisions encompassed by the law. Reference is made to the statute and regulations as well as the practice of the insurance and lending industries in implementing the law.

1. Entities Encompassed by the Act

The 1994 Reform Act amended §4012a of 42 U.S.C. to address flood insurance purchase and compliance requirements and escrow accounts. The essential part of the compliance provision is contained in §4012a(b), which addresses three kinds of lenders:

- Federally regulated lenders
- Government-sponsored enterprises (GSEs)
- Federal agency lenders.

The new law focuses on compliance with the mandatory purchase requirement as the responsibility of federally connected private lenders and GSEs that purchase loans in the secondary market. These entities must ensure that a building or mobile home and any applicable personal property securing a loan are covered by flood insurance for the term of the loan. The amount of flood insurance must be at least equal to the outstanding principal balance of the loan or the maximum amount of coverage made available under the Act for the particular type of property, whichever is less.

While the 1973 law only required the purchase of flood coverage, the 1994 Reform Act clearly specifies that flood insurance is required for the term of the loan, or any time during the term of the loan when the lending institution determines that the improved property or mobile home is located in a special flood hazard area (SFHA).

Section 4012a(b) subdivides its treatment of the entities regulated, yet imposes similar requirements on the three types of affected lenders. Essentially, the statute mandates flood insurance coverage even if the SFHA designation is first identified after settlement, but during the term of the loan, because of remapping or other reasons.

The Act's main impact is on residential mortgage lenders and loan servicers; yet, whether the loan is for consumer or commercial purposes is irrelevant. The extension of credit may take several forms, including loan, refinancing, consolidation, or renewal of an existing extension of credit. The mandatory purchase requirement attaches to any type of secured loan, whether a fixed rate, variable rate, or balloon loan. The requirement to obtain flood insurance also applies regardless of the type of security interest taken, e.g., a mortgage indenture, judgement note, cognovit note, or any other type of security or trust agreement. Even on those loans where real estate is secured out of “an abundance of caution,” the mandatory purchase provisions apply.

As stated in the Supplementary Information section of the final regulation, the duties of a regulated lender with respect to Federal flood insurance requirements for a particular loan cease upon the sale of the loan. An exception would be if the seller of a loan agrees to retain responsibility for complying with the Act's requirements under a loan-servicing agreement with the transferee. For example, if a regulated lender sells the loan to an unregulated lender while retaining servicing rights, it will also retain obligations under the service contract.

Most of the provisions of the Reform Act became effective on September 23, 1994, and apply prospectively to all new loans and regulated activity, but not to existing loans for which no changes have occurred since that time.

The following entities are not covered by the Act:

- Unregulated private financial institutions that engage primarily in the purchase of mortgage loans
- Unregulated mortgage bankers or brokers who only serve as loan originators
- Private mortgage lenders
- State regulated lending institutions not tied to Federal oversight.

a. Federally Regulated Lenders

The most significant mandatory purchase provision is found in Title 42 U.S.C. 4012a(b)(1). That subsection directs Federal regulators to adopt regulations requiring the lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in an SFHA, if the building, mobile home, and any applicable personal property securing such loan is to be the security for the loan. This provision is the crux of the law, around which the other requirements of the Act have been structured.

The flood insurance provisions of the Reform Act require the following Federal agencies to revise their current flood insurance regulations to reflect the changes in the law:

- Board of Governors of the Federal Reserve Board
- Office of the Comptroller of the Currency (OCC)
- Office of Thrift Supervision (OTS)
- Federal Deposit Insurance Corporation (FDIC) (All State FDIC member banks, including small institutions, are subject to the amended provisions.)
- National Credit Union Administration (NCUA)
- Farm Credit Administration (FCA)

These six Federal entities for lending regulation have issued a joint regulation to fulfill the statutory requirements. All six agencies coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC) in developing this joint regulation. The final regulation was published in the Federal Register on August 29, 1996, and appears in each agency's regulations. Citations to the various Code of Federal Regulations (CFR) sections can be found in Appendix 1.

The institutions supervised by the six agencies are referred to collectively as regulated lending institutions or lenders, 42 U.S.C. §4003(a). These lenders include any bank, savings and loan association, credit union, Farm Credit System Institution, or similar institution that is supervised, regulated, or insured by a Federal entity for lending regulation.

A significant change of position by the agencies is their interpretation of the Reform Act's new definition of "regulated lending institution" to include subsidiaries of institutions that are service corporations. This definition includes the phrase, "similar institution subject to the supervision of a Federal entity for lending regulation," as defined in §4003(a)(10). The agencies apply their flood insurance regulations to service corporations that engage in mortgage lending, believing that this position is consistent with the Reform Act's statutory language and Congressional intent. This practice also ensures uniform and consistent treatment for “regulated” financial institutions.

Federal lending regulators deem subsidiaries of the institutions they regulate as subject to the rules applicable to the operations of the parent. Therefore, although a subsidiary entity that engages in mortgage brokering or servicing may not be directly regulated, it is considered subject to the mandates of the 1994 Reform Act. As noted in the Supplementary Information section of the final regulations, the agencies believe that the purpose of the Federal flood insurance statutes is best served by treating loans made by a subsidiary service corporation in the same way as a loan made by others in the corporate structure. For example, the FDIC's portion of the joint final rule makes subsidiaries of insured nonmember banks subject to Federal flood insurance requirements by defining the term "bank" to include a subsidiary of such institutions. The Reform Act included this provision to increase compliance with the mandatory purchase requirements among regulated lenders.

The law requires the applicable Federal regulator to develop regulations that direct regulated institutions not to make, increase, extend, or renew any loan on a structure located in an SFHA unless flood insurance is purchased and maintained for the term of the loan. The Conference Committee report accompanying the legislation confirms that refinancing an existing loan is to be considered as the making of a new loan for purposes of the mandatory flood insurance purchase requirements.

b. Government-Sponsored Enterprises

Government-Sponsored Enterprises for Housing (GSEs) include the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Government National Mortgage Association (Ginnie Mae). These entities are privately owned, federally chartered corporations whose sole business is to support residential housing by providing a secondary market for mortgages. They are required under the new §4012a(b)(3) to implement procedures reasonably designed to ensure that designated loans have flood insurance at the time of origination and at any time during the term of the loan.

The variation in the compliance wording from that found in the regulated lender provision can be attributed to the fact that GSEs have a contractual, not a regulatory, relationship with their sellers. The GSE requirements are imposed upon the primary lender as a condition of purchasing the loan. Thus, borrowers not directly covered by the mandatory purchase law will ultimately be required to satisfy the statutory flood insurance requirements if their lenders sell their loans to Fannie Mae or Freddie Mac. The mandatory purchase requirements flow from the original transaction.

Also, under the guidelines of Fannie Mae and Freddie Mac, servicers of loans sold to those agencies are required to assume responsibility for compliance with the flood insurance requirements. However, no existing flood insurance requirements cover lenders or servicers that are not federally regulated and that do not sell loans to Fannie Mae, Freddie Mac, or other GSEs.

As secondary market agencies, GSEs have no direct contact or dealings with borrowers, but do have the ultimate exposure on the loan. Consequently, the GSE guidelines are designed to ensure that any "covered loan" they buy has flood insurance for the life of the loan. Freddie Mac and Fannie Mae now require lenders and servicers to keep flood insurance up to date, monitor publication of all future map and community changes, and impose or relieve the mandatory purchase requirement during the term of the loan.

The GSEs have the ability to establish their own requirements to protect their interest in the loans they purchase. These standards can be more stringent than those found under the Federal regulations. For example, although the Federal regulators do not require monitoring for map changes, the GSEs do, thereby providing the impetus for monitoring. See Appendix 7 for GSE-issued guides (excluding community listings).

c. Federal Agency Lenders

The statute in §4012a(b)(2) gives a new name to this category of lender, known as the "Federal agency lender." The law now broadens the flood insurance requirement to specifically include loans on applicable real estate secured by Federal agencies. Federal agency lenders such as the Federal Housing Administration (FHA), the Small Business Administration (SBA), and the Department of Veterans Affairs (VA) may not subsidize, insure, or guarantee any loan if the property securing the loan is in an SFHA of a community not participating in the NFIP. For the most part, Federal agency lenders follow the same standards set by the Federal regulators, although some exceptions can be found.

2. Specific Provisions of the Act

a. Limits Available

The 1994 Reform Act §4013(b) increased the maximum amounts of flood insurance available under the NFIP.

The current amounts are shown below:

Building Coverage	**Emergency Program**	**Regular Program**
Single-family dwelling	$ 35,000	$250,000
2-4 family dwelling	$ 35,000	$250,000
Other residential	$100,000	$250,000
Nonresidential	$100,000	$500,000
Contents Coverage		
Residential	$ 10,000	$100,000
Nonresidential	$100,000	$500,000

Special limits apply in Alaska, Hawaii, Guam, and the Virgin Islands. See page RATE 1 in the NFIP *Flood Insurance Manual* for details.

The current maximum limit of coverage for residential properties is $250,000 for structure and $100,000 for contents; and $500,000 for nonresidential properties for both structure and contents. Whenever FIA changes the amounts of coverage available or amends the policy form, the change is published in the Federal Register.

(1) Land Not Insurable

The Act applies to improved real estate, i.e., buildings, not land. Section 4012a(b) describes the flood insurance purchase requirement for lenders making conventional loans in terms of "improved real estate or a mobile home located or to be located" in an SFHA. The law conditions the making of a loan in an SFHA upon there being flood insurance covering "the building or mobile home and any personal property securing such loan."

The structure must be insurable under NFIP requirements in order to qualify for an NFIP policy.

The reference to "buildings and mobile homes" is consistent with the NFIP's practice to insure only buildings, including manufactured homes (mobile homes), and not raw land. Thus, improved real estate, as used in §4012a(b) of the Act, means land with a building on it. The mandatory flood insurance purchase requirement applies only to the buildings and manufactured homes that constitute the improvements on the land. Inasmuch as the NFIP does not provide insurance coverage for land, only for structures, the location of a building in relation to the SFHA determines the applicability of the mandatory purchase provisions. Some portion of the building itself, and not just a portion or portions of the real property, must be located in an SFHA for the mandatory purchase provisions to apply. Buildings located within the Flood Insurance Rate Map (FIRM) area, but not within the SFHA, are insurable.

(2) Calculating Coverage

The NFIP policy does not provide indemnification for losses to unimproved real estate, i.e., raw land. The lending regulations provide that, in addition to the statutorily prescribed dollar limits, flood insurance coverage under the NFIP is limited to the overall value of the property less the value of the land. Accordingly, a lender must evaluate the amount of coverage required in relation to the portion of the loan that is associated with the improved real estate, (excluding the appraised value of the land), or the maximum amount of insurance available under the NFIP, whichever is less. This is especially significant in cases where the loan exceeds the value of the insurable building(s). Where the outstanding principal balance of the loan exceeds the value of the building, the lender should exclude the value of the land in determining the amount of coverage needed. When the lender does not take into account separate valuations of land, which is not insurable under the NFIP, and improvements, which are insurable, the insured may be paying for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders should avoid creating such a situation.

When flood insurance coverage is needed, lenders should follow the same general business practice in calculating the coverage amount on a structure as they do in placing hazard coverage. The terms and conditions of the hazard clause contained in the loan document fully describe the rights and conditions of the parties.

In addition, in determining the amount of insurance to carry, lenders must consider the extent of recovery allowed under the NFIP policy forms, as described below:

- General Property Policy form
  - Designed for use on nonresidential risks
  - Limits recovery to actual cash value; coverage is intended to Include repair or replacement less depreciation.

- Dwelling Policy form
  - Designed for use on residential risks
  - Pays losses on the basis of replacement value for primary residences where the insured has purchased insurance of up to at least 80 percent of the replacement cost of the structure. Under the NFIP policy, "replacement value" means that the coverage is intended to include the full cost of repair or

  replacement without deduction for depreciation.
  - Pays losses on the basis of actual cash value for secondary residences and commercial buildings

- Residential Condominium Building Association Policy form
  - Described in Section D
  - Has its own replacement cost provision.

(3) Deductible

The amount of the deductible is set by FEMA/FIA in the regulations. Currently, the standard minimum deductible for policies rated on the basis of subsidized rates is $750. A minimum $500 deductible applies to all other policies. The maximum deductible is $5,000. NFIP makes available optional deductibles higher than the standard $500 and $750 deductibles at a premium discount.

It is the practice in the financial industry for the lender to dictate the amount of the deductible based upon the authority found in the loan document hazard clause. A modification in the deductible can be accomplished at renewal or by endorsement mid-term with the lender's written request.

Neither the Flood Act nor the lender regulations address the amount of deductible that must be carried. However, lenders often exercise their business judgment prerogative by requiring that only the standard deductible be carried as a safeguard in protecting their interest in the improved real estate. The GSE secondary market members designate what they consider as the proper deductible. Freddie Mac's guide states the deductible may not exceed the higher of $1,000 or 1 percent of the policy's insurance limits, subject to the maximum deductible allowed under the NFIP. Fannie Mae's guide provides that unless a higher maximum deductible amount is required by state law, the maximum allowable deductible is the higher of $1,000 or 1 percent of the face amount of the policy.

(4) No Coverage if Land Loan Only

If a lender makes a loan in which there is no lien on any land upon which there is a building, i.e., improved real property, the flood insurance purchase requirement does not apply. The NFIP does not insure land, and the Act does not address mortgages secured by land alone. Similarly, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any improvement on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement. This is consistent with the purposes for which the purchase requirements of the Act were adopted: to protect lenders and Federal resources against potential losses resulting from uninsured secured loans, and to protect unwary borrowers against financial losses resulting from losses to uninsured buildings.

(5) Low-Value Structure on High-Value Land

Lenders are sometimes confronted with a situation where a structure is being used for residential or commercial purposes on land whose value alone would be sufficient to secure the loan without regard to the value of the building. In this situation, the Act does not give a lender the option of enabling the borrower to avoid the purchase of flood insurance, even though the value of the land would provide more than adequate security for the amount of the loan, without taking into account the value of the building on the land. If the land has a building on it, and the lender has a security interest in that building, the lender must require the purchase of flood insurance to protect its security interest. The insurable value of the building and its improvement(s) will govern the amount that can be required. The amount of required insurance coverage is the lesser of the principal balance of the loan(s) or the maximum coverage available under the NFIP. The NFIP policy does not provide coverage for losses in excess of the value of the insurable structure. By carrying coverage, the lender is also protecting the government's interests by preserving the assets of agencies that insure the lender's deposits.

The question of limits on high-value land with relatively low-value structures can be an issue in agricultural lending. The regulators have made clear that Congress, in enacting the 1994 Reform Act, did not differentiate agriculture from other types of lending, and no exception by regulated lenders can be made without legislative action.

The value of the land should be deducted from the overall value of the secured property when calculating the required limits.

(6) Buildings in the Course of Construction

When a structure is to be built in an SFHA that, when completed, will be a walled and roofed structure that will be eligible for coverage, flood insurance must be purchased to provide coverage during the construction period. Therefore, when a development or interim loan is made to construct insurable improvements on land, flood insurance coverage must be purchased. The only practical way of implementing the flood insurance coverage is to require the purchase of the policy at the time that the development loan is made, to become effective at the time the construction phase is commenced, and in an amount to meet the mandatory purchase requirement.

Material to be used on a building in the course of construction, but yet to be walled and roofed, is eligible for flood insurance, subject to certain underwriting restrictions. The NFIP, to the extent possible, conforms its practices with those of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place.

For new construction in Regular Program communities, where elevation certificates are required, the certificate and the premium will be based upon an elevation figure derived from construction drawings. However, the policy will not be renewed until a new certificate based upon actual construction has been submitted. Coverage under the policy becomes available immediately when the construction starts, and is not delayed until the building has reached a roofed and walled condition.

(7) Mobile Homes

The statute brings within its scope a loan securing mobile homes that are, or will be, located in an SFHA. The loan need not include security in the real estate underlying the mobile home in order for the mandatory purchase provisions to apply. NFIP coverage is available only with respect to a structure or mobile home and not the land on which the structure or mobile home sits. A chattel mortgage on a mobile home will trigger the mandatory purchase requirements.

The lending regulations and FEMA/FIA use the term manufactured home interchangeably with mobile home. FEMA has defined this term in its regulations. See 44 CFR 59.1 (defining manufactured home), 44 CFR 61.13, and Appendix A to 44 CFR part 61 (FEMA's standard insurance policy defining mobile home as meaning manufactured home). To be eligible for coverage in an SFHA, a manufactured home must be on a permanent foundation and meet specific anchoring requirements. A manufactured home does not include a recreational vehicle, or other similar vehicle, unless it is converted to rest on a permanent foundation.

The supplementary information that accompanies the regulations acknowledges that in some situations a lender may not know where the manufactured/mobile home will be located until just prior to the time of loan closing. The agencies will not apply the borrower notice requirements to those "home only" mobile home transactions that close before the permanent location for the mobile home is known. Clearly, a lender cannot determine whether flood insurance is required before the location of the mobile home has been fixed. Upon learning the location of the mobile home, the lender must use its best efforts to determine whether the mobile home is in an SFHA, notify the borrower, and mandate the purchase of any required flood insurance.

Although the Real Estate Settlement Procedures Act (RESPA) does not require escrowing on a loan where land is not part of the security, the scope of the Reform Act includes escrowing on a designated loan secured by a mobile home. Section 10 of RESPA, which pertains to the escrow rules, only applies to mobile homes that are also secured by the real estate upon which they are situated; however, the Reform Act is broader in scope. A mobile home lender is required to escrow even if the loan is on the mobile home only.

A substantial number of mobile homes have the peril of flood included under a private contract of insurance. A lender should review the private flood coverage in light of the mandatory purchase and FIA guidelines (see Section E.5 of these guidelines).

(8) Personal Property

As specified in §4012a(b)(1) of the Act, contents coverage is not required unless personal property, in addition to improved real property, secures the loan. Since residential mortgages rarely include personal possessions as part of the loan security, lenders are not required to compel borrowers to purchase contents coverage. When a commercial loan on a structure includes inventory and other trade or business movable property as security for a loan, that property must be covered by flood insurance under contents coverage. On the other hand, flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan. Lenders are encouraged to advise borrowers to include contents coverage for personal property and inventory when it is prudent to do so.

b. Underinsured Structures

The 1994 Reform Act repealed Title 42 U.S.C. §4013(b)(6), which contained a statutory limit for coverage required to be purchased. The Reform Act requires coverage "in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available . . . ." The maximum amounts available are described in Section C.2.a above. Loans that previously had principal balances at the program limits may be found to be underinsured because of the new cap on limits. Lenders and servicers may adjust coverage limits at policy renewal.

In order to cure the underinsurance deficiency, §4012a(e) of the Reform Act specifies a lender's notification and placement requirements for a property in a designated floodplain "covered by such insurance [when it is] in an amount less than the amount required for the property." The statute designates the same steps to be followed in the event additional insurance is required as when no insurance exists. When a lender (or a servicer acting on the lender's behalf) discovers that security property is not covered by an adequate amount of flood insurance, it must first provide notice and opportunity for the borrower to obtain the necessary amount of flood insurance, and then purchase flood insurance in the appropriate amount on the borrower's behalf if the borrower fails to purchase it.

c. Home Equity and Second Mortgages

Flood insurance is required on designated home equity or second mortgage loans made by regulated lenders if the loans are secured by a building or a mobile home, regardless of the lien priority. Lenders also need to be cognizant that GSEs have specific provisions in their sales guides that mandate flood insurance on designated home equity and secondary mortgages. The location of the secured property, not the use of funds received on a home equity or second mortgage, governs whether flood coverage is required.

Even though home equity and second mortgage loans are subordinate to a primary loan, the terms of the mandatory purchase law apply with equal force. No matter what priority its loan may be, a lender remains subject to the various provisions of the Act, including the notification, Standard Flood Hazard Determination Form, and force placement requirements. However, as described in the waiting period section, the 30-day delay in effective date has been deemed by FIA not to apply on home equity loans and second mortgages. Coverage may go into effect without a waiting period.

Subject to the limit on insurance available and the requirement cap, a home equity lender must protect its interests by having coverage in place at the time the loan is extended. The lender must make a determination about the flood insurance requirement when the application for the loan is made. If the first mortgagee otherwise complied with the mandatory purchase requirements and no remapping has occurred, then no new determination is needed for the second mortgage or home equity loan. Drawing against an approved line of credit does not require further determinations to be made.

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan because the borrower will be drawing down differing amounts on the line of credit at different times. In those instances where there is no policy on the collateral, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. For administrative convenience in ensuring compliance with the requirements, a lender may take the following alternative approaches:

- Review its records periodically (at least annually) so that as draws are made against the line or repayments made to the account, the appropriate amount of insurance coverage can be maintained; or

- Upon origination, require the purchase of flood insurance for the total amount of the loan or the maximum amount of flood insurance coverage available, whichever is less.

If a junior lienholder determines a first mortgagee has neglected to obtain flood coverage, it must be assured that coverage is purchased on the entire outstanding loan amount in order to comply with the Act as well as to protect its priority as to insurance proceeds. Similarly, if the first mortgage has insufficient coverage, the borrower must cure this deficiency by purchasing additional coverage sufficient to protect all outstanding loans. Apart from the provisions of the Flood Act, the lender can rely on the hazard clause of the home equity or second mortgage loan document in requiring coverage in any underinsured situation.

Since only one NFIP policy can be issued on a structure, no matter how many loans exist, a subordinate lienholder must verify that any required escrow of premium is being undertaken by the primary lienholder (see the escrow discussion at Section C.2.g. Accordingly, the lienholder must coordinate coverage through its borrower and the insurance agent of record. A home equity and secondary lienholder's interest is accomplished by endorsement to the policy. Evidence of coverage can be confirmed by receipt of an insurance certificate from the agent or a revised declarations page from the insurer. A secondary lienholder should ensure its interest is protected by having its name appear on the policy or by other appropriate means. If the existence of a home equity loan or a second mortgagee is not made known to the Write Your Own (WYO) insurer, appropriate renewal notices may not be sent.

The small loan exception of the Reform Act only applies if the original principal balance is $5,000 or less, and under a repayment term of 1 year. These criteria normally do not apply to home equity loans.

d. Notification Requirements

The 1994 Reform Act greatly expands the administrative requirements of lenders. There are now three notifications a lender must consider. In addition, a lender must complete a form known as the Standard Flood Hazard Determination Form (SFHDF) prior to concluding loan processing. The three notices are discussed in this section (also see Appendix 4), and the SFHDF is reviewed in Section C.2.e.

Under the 1994 law, all regulated lenders and Federal agency lenders must deal with the following notices:

- Notification to Borrower, otherwise known as "Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance
- Notification of Change of Servicer
- Expiration Notice.

The above notices are discussed in the order presented.

(1) Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance

Lenders must continue to notify only those prospective borrowers whose loans secure a structure located in an SFHA. The purpose of the notice is to advise the borrower about the Federal flood insurance coverage requirements and whether Federal disaster relief assistance is available in that location. In the case of multiple applicants on a single loan, each applicant should receive the notice.

The notice can be accomplished using the sample form attached to these guidelines as Appendix 4. The notice form can also be found as an appendix following the text of each agency's regulations. Use of the sample form is not mandatory. A lender will be considered to be in compliance with the notice requirement if the sample form is used, or if the required language of the form is used in another format. A lender may personalize and change the format of the sample form, but must provide the borrower with the minimum information contained in the regulations.

The notice must be provided a reasonable time before completion of the loan transaction to ensure that a flood insurance determination is made as a condition of a loan being closed. The regulations do not establish a fixed time period in which a lender must provide the notice. Instead, they state that what constitutes a reasonable time will necessarily vary according to the circumstances of the particular transaction. The agencies consider the giving of the notice 10 days prior to completion of the transaction as a reasonable time interval. Completion and delivery of the notice within this time period serves both to inform the borrower and to protect the lender.

In lieu of giving direct notice, the law provides that a financial institution may obtain "adequate assurances" in writing, from the "seller or lessor" of the property, that the borrower has been advised of all required information by the lender prior to settlement. The burden of determining the flood status of the property and providing notification remains with the lender, whether the notice is handled directly by the lender or through others.

The regulations track the 1994 law by also requiring a lender to extend this notification to any servicer of the loan. A lender must notify the servicer as promptly as possible after notifying the borrower, and in any event not later than the time that loan data such as hazard insurance and tax information is transmitted to the servicer. The notice may be provided in the same form as the notice to the borrower. This provision applies even if the servicer is affiliated with the lender.

The text of the Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance must include the following:

- A general warning with respect to the chance of flooding
- A description of the mandatory purchase requirements
- An explanation of the eligibility requirements to receive disaster relief
- A discussion of the availability of flood coverage through:
  - An insurance agent from the direct NFIP
  - A WYO insurer
  - A private flood insurer.

The form also references the review or appeal process through which a disputed flood hazard determination may be jointly submitted to FEMA for a final determination on whether a building or mobile home is located in an identified SFHA. The appeal process is explained more fully in Section B.1.e.

Since the form is also utilized by lenders for loans in nonparticipating communities, as required by §4106(b), it is also designed to advise borrowers whose property is located in an SFHA in those communities where NFIP flood insurance is unavailable. As stated earlier, a lender may choose to make a conventional loan in an SFHA in a nonparticipating community. Government-guaranteed or insured loans (e.g., SBA, VA, and FHA loans), however, are not permitted to be made in those communities.

The notice required by this provision is different from the Uniform Residential Appraisal Report form, which contains questions on the location of a property relative to flood hazard areas. The appraisal report form is used by many lenders, as well as Federal entities such as Fannie Mae, Freddie Mac, HUD, and VA.

The regulations require the lender to retain a record or evidence of the borrower's receipt of the notice throughout the period the lender owns the loan. This record can be the borrower's statement or initials that the notice was received directly, or the U.S. Postal Service return receipt in either hard copy or electronic format. The lender need not retain a hard copy version of the notice to the borrower and loan servicer.

The applicability of this notice requirement to mobile homes is discussed in Section C.2.a(7) of these guidelines.

(2) Notification of Change of Servicer

The 1994 Reform Act in §4104a(b) mandates that, if the secured property is in an SFHA, a regulated lender must notify the Director of FEMA or the Director's designee of the identity of the loan servicer when a loan is made, increased, extended, renewed, sold, or transferred. FEMA has designated the various WYO insurers, or the NFIP's direct side servicing agent, as its representatives to receive the notice regarding change of servicer.

When a policy is first written, the agent fulfills the notice requirement by indicating on the policy application the name of the mortgagee who is to receive notices. The obligation on the part of the seller of the loan to inform FEMA's designee is also triggered each time the loan is assigned or transferred to another lender or servicer. The notice is to be sent to either the WYO insurer (directly or through the agent of record) or to the direct NFIP if that entity is the insurer.

This notice requirement may be accomplished by utilizing whatever electronic or hard copy format the parties generally use. The regulators acknowledge the use of the RESPA Notice of Transfer of Servicing form, designed to advise a borrower of the replacing servicer's identity, as sufficient to meet this requirement if it contains all relevant information.

The information needed by a FEMA or its designee includes:

- Borrower's name
- Flood insurance policy number
- Property address (including city and state)
- Name of lender or servicer making notification
- Name and address of new servicer
- Name and telephone number of contact person at new servicer.

The notification of the identity of the servicer is in the nature of a "general change endorsement," which is completed and submitted to the WYO insurer or NFIP direct side by the insurance agent of record.

The law requires this notification to be sent by the incumbent lender or servicer to the Director's designee not later than

60 days after the effective date of such change. This duty to notify is, in turn, passed along to the new (transferee) regulated lender or servicer upon subsequent change of servicer.

This notice procedure accomplishes several objectives:

- It makes the insurer aware of the identity of the party designated to receive mailings such as the expiration and policy renewal premium notice, which the Reform Act now requires the insurer to mail 45 days prior to the anniversary date.

- It eliminates any failure on the part of subsequent lenders or servicers to notify the insurance agent or insurer of a change in a mortgagee (or servicer) in order to enable renewal and/or expiration notices to be sent to the proper lender or servicer of the loan.

- This new requirement is designed to combat the high nonrenewal rate that occurs after the first year fo the loan. For example, in the case where the insurance payments are not escrowed, without the updated information, the mortgagee or servicer would have no way of verifying whether the borrower continued to renew the policy or allowed it to lapse.

The regulations make no provisions as to recordkeeping of the change of servicer form; however, the lender and servicer have the burden to demonstrate the notice was given.

If one institution acquires or merges with another, the successor institution must provide notice for the loans being serviced by the disappearing institution if the disappearing institution did not provide notice prior to the effective date of the acquisition or merger.

Although the statute requires the Director or the Director's designee to be notified when servicing is transferred, neither the statute nor the regulations require notice when a loan is paid off.

(3) Expiration Notice

Subsection c of §4104a of the Act and the Standard Flood Insurance Policy both require the Director of FEMA (regarding direct business), and the Director's designee (i.e., a WYO carrier on WYO policies), to send a notice of the date of expiration of the policy contract. This expiration notice must be sent by first class mail to the insured, any known mortgagees, servicer, and the owner of the property. FEMA interprets the term "owner of the property" as used in the statute to mean the party insuring the risk. An expiration/reissue notice is also mailed to the insurance producer. The notice is to be sent not less than 45 days prior to expiration to the last known address of the recipients. The law does not require proof of receipt of the notice. The statutory notice provisions are in addition to any applicable terms and conditions found in the Standard Flood Insurance Policy, as well as any obligation found in the mortgage or lending document between the debtor and creditor.

Under the provisions of the Standard Flood Insurance Policy, the WYO insurer and the Direct NFIP must also notify the lender, or servicer acting on behalf of the lender, along with the borrower, when the insurance contract is due for renewal.

e. Standard Flood Hazard Determination Form

Independent of the notice requirements, a separate provision was added in the 1994 Act, §4104b, that now requires a lender to document a loan by entering information on the newly developed Standard Flood Hazard Determination Form (SFHDF). FEMA has developed a one-page standard form for recording the results of the determination of whether a building or mobile home is located in an SFHA. The authorizing regulation is found at 44 CFR §65.15, and the form is found in Appendix 6. The law requires the form to be used for all loans, not only those for which the building or mobile home is in an SFHA. The six agencies' joint final regulation requires their respective regulated lending institutions to use the SFHDF. In addition, the Fannie Mae and Freddie Mac Seller/Servicer Guides (see Appendix 7) also require use of the SFHDF.

Lenders will use the SFHDF to document the process of determining whether or not flood insurance should be required in connection with a given mortgage loan transaction, while Federal banking entities will use it to monitor compliance by lenders. The form will document that a determination was made for a building or mobile home, whether it is in or out of the SFHA, whether flood insurance is required, and whether Federal flood insurance is available.

(1) Determination Process

The lender can complete the form itself, or use an outside service to track and analyze the flood maps. FEMA does not provide the service of supplying specific flood hazard information. The lender must take the responsibility for making determinations, regardless of whether the lender actually makes the determination internally or acquires determination services from another source. The Act in §4104b(d) states that the lender may provide for the acquisition or determination of flood hazard information to be made by a person other than the lender only to the extent such person guarantees the accuracy of the information. Neither FEMA nor the lending regulators have designated standards for what constitutes an adequate guarantee of the information provided to justify reliance upon the data.

A previous determination may not be reused when making a new loan. If the loan is not new, i.e., if the transaction pertains to increasing, extending, renewing, or purchasing an existing loan, the determination can be reused if:

- It is less than 7 years old
- No new or revised flood map has been issued in the interim
- It was initially recorded on the SFHDF that became effective January 2, 1996.

The regulators will impose no regulatory penalty if the prior determination meets the above requirements. Once a new map has been issued, a lender must use the modified map as a guide, and a new determination is required. Any disputes that arise between the lender and borrower concerning the location of a structure in relation to an SFHA is eligible to be resolved in accordance with the review process as described in Section B.1.e.

If a borrower obtains a home equity or second mortgage from its first mortgagee that is secured by a junior lien position, and provides evidence that adequate flood insurance coverage is in place for all loans, the lender can rely upon the original SFHDF if no remapping has occurred.

(2) Instructions for Using the SFHDF

The reverse side of the SFHDF has detailed, section-by-section instructions on its use. A separate SFHDF is required on loans on adjacent properties. However, if a single property contains multiple buildings, a listing of properties on the parcel can be attached to the SFHDF. Only one structure may be insured under one NFIP policy. Each building securing a loan must be covered by a separate NFIP policy.

The SFHDF may be used in a printed, computerized, or electronic manner and must be retained in either hard copy or electronic format. FEMA has addressed the required format of an electronically maintained form in its regulation. It is FEMA’s position that if an electronic format is used, the format and exact layout of the SFHDF are not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the SFHDF.

The form need not be kept in the loan file, but a lender is expected to be able to retrieve the record within a reasonable time period upon being requested by its Federal supervisory agency. Lenders are neither required to provide nor prohibited from providing the WYO insurer, insurance agent, or the borrower with a copy of the form.

Lenders and servicers are reminded that the Act gives them the responsibility of determining the flood zone location of each mortgaged property. They cannot discharge the duty simply by obtaining some form of self-certification or assurance from the mortgagor-borrower that the structure in not in an SFHA. If the lender wishes to change its original determination of the property’s location based upon information submitted by the mortgagor, the lender/servicer must convince itself that its original determination was in error and make any change based on its review of that new information. A lender or servicer should simply accept unsubstantiated allegations, from whatever source, about the building's flood zone location. The ultimate responsibility for making such determinations under the statute rests with the mortgagee, not the mortgagor. Contested determinations are subject to the review process described in Section B.1.e of these guidelines.

f. Waiting Period and Exceptions

The Reform Act modifies the waiting period required before an NFIP policy can go into effect from 5 days to 30 days. This 30-day wait is for "coverage under a new contract for flood insurance" and "any modification to coverage under an existing flood insurance contract." The express intent of Congress in mandating a 30-day waiting period was to prevent the purchase of flood insurance at times of imminent flood loss. Therefore, unless an exception applies, as described in the following two subsections, a 30-day waiting period applies.

(1) Coverage Obtained in Conjunction With a Loan

Exceptions to the 30-day wait apply when coverage is placed in conjunction with loan activity or the remapping of a community. Section 4013c of the Act contains what is called the "initial purchase" provision, which states the 30-day waiting period does not apply to the following instances:

- The initial purchase of flood insurance . . . when the purchase is in connection with the making, increasing, extension, or renewal of a loan," or

- "The initial purchase of flood insurance . . . pursuant to a [a map] revision or updating of floodplain areas of flood zones" within a 1-year period.

The effective date of coverage is 12:01 a.m. (local time) on the first calendar day after the application date and the presentation of payment of the premium.

It is significant to note that the first exception described above to the 30-day waiting period (when the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan) is much broader than it appears. Pursuant to Policy Issuance #8-95, dated December 15, 1995 (see Appendix 8), the FIA has interpreted the exception to the 30-day wait to apply in situations pertaining to refinancing, placement of second mortgages, and modification of existing mortgages. The Policy Issuance also applies to force placement, increased limits at renewal, and map revisions. For a detailed description of the waiting period rules, refer to the FIA Policy Issuance.

(2) Assignment of Policy

There is no waiting period when an existing policy is assigned to a purchaser of improved real estate.

Prior to the 1994 legislation, the regulations provided for no wait in the case of a title transfer, so long as the policy was applied for and the premium was paid at or prior to the time the title transfer or assignment of the policy occurred. Now, unless there is an assignment of the policy from the seller to the buyer where the purchaser does not obtain a mortgage, a 30-day wait is required by §4013c(1).

The Standard Flood Insurance Policy form contains an assignment provision in the General Conditions and Provisions Article, which allows an assignment upon transfer of title.

g. Escrow Requirements

The escrow requirement, Section 4012a(d), is limited to instances where a lender establishes an escrow account for a loan for another purpose. If financial institutions and their servicers require the escrow of taxes, insurance premiums, or any other fees or charges for covered loans, they must also escrow for premiums and fees for flood insurance.

(1) RESPA

The mandatory purchase law expressly states that escrow accounts established under the Flood Act are subject to the escrow account provisions of Section 10 of the Real Estate Settlement Procedures Act (RESPA) of 1974, which imposes accounting and notice obligations on a lender for consumer loans. However, in the Supplementary Information section of the final regulation, the agencies do address differences between the scope of coverage of the Reform Act and RESPA. They do not believe the Reform Act is intended to impose the particular requirements of Section 10 on loans that are not subject to RESPA generally, for example, commercial loans secured by residential buildings. The regulations note that nothing in the legislative history of the Reform Act suggests that Congress meant to extend the scope of Section 10 of RESPA in this way through the enactment of the Reform Act. Without specific direction from Congress, the agencies do not believe that they have the authority to expand RESPA's Section 10 coverage to loans that are not otherwise subject to RESPA.

RESPA, which generally limits the amount that may be maintained in escrow accounts, and requires notices containing escrow account statements for those accounts, applies primarily to escrow of consumer loans. Generally, this means that only loans on one- to four-family dwellings will be subject to the RESPA escrow rules. Loans on multi-family dwellings of more than five units are not covered by these requirements. However, even though they do not have to follow the RESPA escrow requirements contained in HUD’s Regulation X, 24 CFR 3500.17, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrow for other purposes such as hazard insurance or taxes.

Therefore, other than for consumer mortgage loans, escrow accounts need not comply with the requirements of Section 10 of RESPA. As the preamble to the joint final rule points out, however, regulated lending institutions must comply with the escrow requirements contained in the Reform Act; it is the method of escrowing that may not be subject to Section 10 of RESPA.

Although the escrow provision only applies to residential loans, lenders are encouraged to escrow on all loans, including those on nonresidential improved real estate.

(2) Applicability

Unlike the RESPA escrow requirements, the escrow of flood insurance includes not only single-family buildings, but also multi-family properties containing five or more residential units. Consequently, escrow on certain residential real estate is required, even though the property may be secured under a commercial or business loan. The Reform Act's escrow provision applies to both home mortgage loans and commercial loans (including, for example, mortgages on apartment buildings or construction loans secured by residential buildings), but only if the lender requires the escrow of other charges for those loans. The mandatory purchase provisions make no distinction between single or multi-family buildings or owner or renter occupancy. The lender is to consider the primary purpose of the building in making its determination. For example, if a building is a mixed-use property, i.e., part residential and part commercial, the primary purpose of the building controls.

Escrowing on all mobile home designated loans is required under the Reform Act, even though RESPA only requires escrowing if the loan encompasses the land upon which the home is situated.

The Act's escrow provisions apply to financial institutions and their servicers, but do not apply to mortgage company originators over whom a Federal regulator has no jurisdiction.

Regulators will examine the loan practices of the lender to determine if the escrow is required. If a lender’s loan practices indicate that escrow is normally required and the loan documents permit escrow accounts to be established, the regulators presume that an escrow account for flood insurance premiums also should be established in the event flood insurance is mandated. Various escrow-type accounts established for loans involving multi-family properties that are substantially different in purpose from single-family residences (e.g., interest reserve accounts and compensating balance accounts) do not constitute escrow accounts under the mandatory purchase requirements. If an escrow account is required, the law requires it to be set up "in a manner sufficient to make payment as due for the duration of the loan."

The flood escrow requirement facilitates the lender making payments as due for the life of the loan. In the past, a significant number of lenders did not require escrowing of flood coverage; in those situations, NFIP coverage was susceptible to lapse. As stated in the committee report, the drafters of the law were mindful that a major reason for the lack of compliance with the NFIP was that many homeowners, believing they would not be flooded, simply stopped paying premiums on their flood insurance policies.

The new escrow practices are designed to balance the need to increase participation with the desire to prevent significant new burdens on lenders and borrowers. Requiring lenders to escrow for flood insurance premiums is expected to significantly improve participation in the NFIP.

(3) Escrow Exclusions

Not all accounts established in connection with a loan secured by residential improved real estate are considered to be escrow accounts that would trigger the requirement for the escrow of flood insurance premiums. The escrow provision for flood insurance would not be triggered in the following situations:

- Voluntary escrowing for credit life insurance
- Establishing accounts in connection with commercial loans for such items as interest or maintenance reserves or compensating balances. Generally, accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself rather than to the protection of the property, would not trigger the escrow requirements for flood insurance premiums.
- Voluntary escrowing for other expenses (escrow is not required, but established at the borrower's request)
- Lender termination of an escrow account for a loan.

h. Force Placement

(1) Authority

Similar to the requirements concerning the issuance of the various notices and escrow, the Act places responsibility to force place on lenders as well as servicers. The 1994 Act requires the force placement of flood insurance if a servicer or lender determines that the security property is not adequately insured. The new Act grants statutory authority to a lender or servicer to purchase flood insurance for the property and charge a premium to the borrower if the property is in an SFHA.

By enacting §4012a(e)(2), Congress intended lenders to have clear authority to force place; under certain circumstances, they are obligated to force place. The force placement of coverage is designed for use at any time during the term of a loan in uninsured and underinsured situations; it is not intended for use at loan origination. If a borrower refuses to obtain flood coverage as a condition of obtaining a loan, the loan is deficient and is not to be made.

If at any time during the term of a covered loan, the lender or servicer determines that the property securing the loan is not covered by flood insurance, or is covered by such insurance in an amount less than that required by law, the lender or servicer must first notify the borrower of the need to carry adequate flood insurance coverage. The law does not specify the precise wording of this notice, so lenders and servicers should give a close reading to the statute and regulations for guidance. The notice must state that the borrower should, at the borrower's expense, obtain flood insurance that is not less than the amount required under the law.

If the borrower fails to purchase such flood insurance within 45 days after such notification, the lender or servicer shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer. In an underinsured situation, when the borrower and the agent of record refuse to cooperate with the new lender, the loan should not be made. If the loan has already been extended, the lender should exercise recourse as provided under the terms of the loan document.

The 30-day waiting period enacted with the 1994 Reform Act does not apply to force-placed policies; instead, the 45-day period from time of notification that a lender must grant to a borrower to voluntarily obtain coverage is the only time delay that controls.

The Act in §4012a(f)(6) contains preemption language stating that the NFIP force placement provisions prevail over state and local law. This wording is significant because many of the state laws that cover force placement are vague and open to interpretation. In addition, this subsection responds to those state laws that prohibit or limit the forced placement, or require the borrower's contractual agreement in order to force place coverage.

(2) Applicability

The terms of the force placement law are broader in scope than the escrow requirement. Force placement applies to any borrower of a designated loan, commercial or residential, whether or not escrow of expenses is required. On any type of force-placed policies, a lender should keep evidence of the determination of whether the loan is in an SFHA, including information concerning the map panel and method by which the determination was made.

Home equity and second mortgage loans also are included under the requirement. A junior lienholder that force places coverage only to the extent of its loan will not protect its interest if a first mortgagee claims priority to any insurance proceeds. Force placement by a second mortgagee will require coordination with the first mortgagee, as well as with the insurance producer and insurer on the first mortgage, if one exists.

The Act requires a designated loan to be covered for its term, in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage available. Although the Reform Act only requires the lender's interest to be protected by flood insurance, a lender may need to consider other factors, such as Fannie Mae and Freddie Mac requirements. Depending on the practice of the mortgagee, the policy may not be sufficient to protect the full equity amount held in the property by the mortgagor in the event of a loss. If the lender opts to protect only its security in the loan, the amount of the policy may be insufficient to cover the full insurable value of the property.

The 1994 Reform Act requires a lender to carry out the force placement as a matter of law, independent of the contractual provisions of the loan. Force placement is not limited to those situations provided for under the mandatory purchase law. Basic loan documents provided by Fannie Mae and Freddie Mac contain language that permit a lender or servicer to force place if necessary. The standard Fannie Mae and Freddie Mac documents permit the lender or servicer to add the force placement charges to the principal amount of the loan.

Force placement of flood insurance is intended only as a last resort, and on mortgages whose mortgagors have failed to respond to the notifications required by the law.

The Reform Act provides that a lender must inform its borrowers that they have a "free choice" of an insurer from whom to purchase coverage (§4104a(a)(3)(c)). That free-choice purchase option also applies to a lender when dealing with force placed coverage. If, within 45 days from the notice, a borrower fails to comply by voluntarily obtaining coverage, a lender or servicer must either:

- Obtain an NFIP policy through a WYO insurer that participates in the Mortgage Portfolio Protection Program (MPPP), or

- Secure a Standard Flood Insurance Policy through either a WYO insurer or the direct program, or

- Obtain flood coverage from a private industry insurer if such coverage is available.

(3) MPPP Method of Placement

Most loans in which flood insurance is involuntarily placed must be processed with a limited amount of underwriting information. Therefore, placement is appropriate through the Mortgage Portfolio Protection Program (MPPP), where only limited underwriting information is required.

The MPPP is an optional program designed for WYO insurers to force place risks subject to the mandatory purchase requirement. A lender or servicer can force place coverage with a WYO insurer that participates in the MPPP. The NFIP direct program does not offer the MPPP. The procedure for utilizing the MPPP has been added to the regulations at 44 CFR. §62.23 subsection (L). Other aspects of the MPPP can be found at Vol. 60, No. 167 of the Federal Register p.44881 et. seq., a copy of which appears in Appendix 9.

Under the MPPP, a force placed policy will be effective for 1 year. The MPPP policy is rated based upon the flood map in force at the time the policy is written. The rates allowed to be charged for force placed policies are considerably higher than those rates available for voluntary policies because of the absence of any underwriting data. Under this program, the mortgagee obtains coverage for itself as well as the borrower; the NFIP insurance policy is a dual interest policy, whereby one contract covers both the borrower and the lender.

The NFIP *Flood Insurance Manual* should be consulted for additional information about using the MPPP to force place policies.

(4) Conventional NFIP Policy

A lender also may force place flood insurance by purchasing a Standard Flood Insurance Policy from either a WYO insurer or the NFIP direct program.

If a lender opts to obtain coverage under a Standard Flood Insurance Policy, certain underwriting information must be available to the agent in order to place the policy. If adequate information is available, the rates used to calculate the premium will be the same as used on the Standard Flood Insurance Policy rather than those used under the MPPP.

After the expiration of the 45-day waiting period, if the lender has sufficient information to produce a policy, it may place a policy with an insurer through an agent of its choice. This method of insuring the risk does not entail the use of any specific notice to the borrower.

(5) Private Flood Insurance

A lender has the option of force placing flood insurance through a private (non-WYO) insurer. Although very few carriers are generally willing to accept personal lines flood risks, some insurers will selectively write the coverage. If private insurance is available, the lender also must consider whether the policy, as well as the insurer, is acceptable to its regulator by meeting the criteria defined by the FIA. The FIA criteria are fully described in Section E.5 of these guidelines.

i. Exceptions

(1) State-Owned Property

If the security property is state-owned and covered by adequate policies of self-insurance, flood insurance is not required. FEMA maintains a list of states with adequate self-insurance programs. This exemption, by its terms, applies only to state-owned property, and not county- or city-owned property.

(2) Small Loan

Section 4012a(c)(2) provides an exemption from the mandatory purchase requirements for any loan made with an *original* outstanding principal balance of $5,000 or less, and with a repayment term of 1 year or less. The dual criteria must be met in order for this exemption to apply. There is no exemption for home equity or second mortgage loans unless they meet these exceptions.

D. CONDOMINIUMS, COOPERATIVES, AND TIMESHARES

The mandatory purchase requirements apply with equal force to condominium, cooperative, and timeshare units. Placing and monitoring coverage on units within a multi-unit structure present special circumstances to lenders and merit particular treatment. Generally, the applicability of the mandatory purchase law can be explained through a review of how the various NFIP policies correspond to the forms of ownership of common interest community organizations, as follows:

- The RCBAP applies to all high-rise and low-rise residential condominium